

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:17-CV-592-BO

CODY GIBSON,)
Plaintiff,)
v.)
HDT GLOBAL, *et al.*,)
Defendants.)

ORDER


This cause comes before the Court on a motion to dismiss pursuant to Rule 25 of the Federal Rules of Civil Procedure filed by defendants Airborne Systems North America, Inc., Airborne Systems North America of CA, Inc., and Airborne Systems North America of NJ, Inc. [DE 55]. A suggestion of plaintiff's death was filed on July 30, 2020, which was served on plaintiff's mother and father as plaintiff's successors. *See* [DE 55 ¶ 7].

Subsequent to the death of a party being suggested on the record, if the claim is not extinguished, a motion for substitution of the proper party must be made within ninety days of service of the notification of death. Fed. R. Civ. P. 25(a)(1). Service of the suggestion of death on the deceased party's representative or successor is required, and the ninety-day time period does not begin until such service has been made. *Fariss v. Lynchburg Foundry*, 769 F.2d 958, 962 (4th Cir. 1985); *Williams v. Bd. of Educ.*, Civil Action No. CBD-19-1733, 2020 U.S. Dist. LEXIS 103263, at *4 (D. Md. June 11, 2020). If no motion to substitute party is made within the ninety-day period, the claim must be dismissed. Fed. R. Civ. P. 25(a)(1); *see also Martin v. Boyce*, No. 1:01 CV 00004, 2004 WL 2713273, at *1 (M.D.N.C. Nov. 24, 2004).

More than ninety days has passed since the filing of the suggestion of death in July 2020 and no motion to substitute party has been filed. Plaintiff's claims are therefore properly

DISMISSED. The motion to dismiss [DE 55] is GRANTED and the clerk is directed to close the case.

SO ORDERED, this 6 day of December, 2020.


TERRENCE W. BOYLE
CHIEF UNITED STATES DISTRICT JUDGE